IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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Kedarmal & Ors. Vs. State of Rajasthan & Anr.

S.B.CRIMINAL MISC. PETITION NO. 1640/2006

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Date of Order : 26/10/2007

PRESENT

HON'BLE MR. H.R.PANWAR, J.

Mr. N.L.Joshi for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 21.11.2006 passed by learned Sessions Judge, Churu (for short 'the revisional court' hereinafter) in Criminal Revision No.146/2006, whereby the revision petition filed by the petitioners against the order dated 19.8.2006 passed by Chief Judicial Magistrate, Churu (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the petitioners and public prosecutor for the State. Carefully gone through the orders impugned passed by both the courts below.

It is contended by learned counsel for the petitioners that after investigation the police filed challan only against husband of the complainant and no challan was filed against the present petitioners who are father-in-law, mother-in-law and brother-in-law (Devar) of the complainant. It is further contended that the petitioners have been residing separately and complainant and her husband are residing separately and therefore, there was no occasion for the petitioners having subjected the complainant to cruelty or harassment in connection with demand of dowry as also non return of the entrusted dowry articles.

On careful perusal of the orders passed by the courts below, it appears that the revisional court has taken note of every piece of evidence including the statements of the witnesses recorded by the police and relying on the statements of the witnesses prima-facie came to the conclusion that there is ground to proceed against the present petitioners. So far as non-consideration of FR is concerned, no specific reasons have been assigned by the police for not filing the challan against the present petitioners. Even if assuming that the petitioners are residing separately, yet it cannot be said at this stage that the

allegations levelled by the complainant are per se incorrect. It is yet to be established by evidence when the witnesses are put to cross-examination. At the stage of taking cognizance, what the Court is required to see from the material placed before it whether there is ground to proceed against the persons named in the complaint or not. I am fortified with my view by a decision of Hon'ble Supreme Court in Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, wherein the Hon'ble Supreme Court dealt with the principles required to be kept in mind at the stage of taking cognizance and reaching a prima facie view and held that at that stage, the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. Taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the magistrate has to be satisfied whether there is sufficient ground for proceeding, and not whether there is a sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined at the time of conclusion of the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

In this view of the matter, when both the courts below have concurrently found that there is ground to proceed against the present petitioners, in my view, there is no error, illegality or perversity in the orders impugned warranting interference in the inherent jurisdiction under Section 482 Cr.P.C. It is settled law that powers under Section 482 Cr.P.C. are to be exercised sparingly, consciously and in rarest of rare case. The case in hand is not of that nature.

The criminal misc. petition has no merit and it is therefore, dismissed.

(H.R.PANWAR),J.

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